

09/838,970

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REMARKS

Claims 1-57 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject application is respectfully requested in view of the following comments herein.

I. Declaration Under 37 C.F.R. 1.131

The declaration submitted under 37 C.F.R. 1.131 on October 13, 2003 stands ineffective since there is no statement that work submitted in Exhibit A (submitted with the 1.131 declaration) was established in the United States. In addition, the Examiner contends there is not a sufficient showing of facts as to establish a complete reduction to practice. It is respectfully requested that the declaration under 1.131 be accepted for at least the following reasons. A newly amended declaration is submitted herewith which includes a statement by the inventors that work submitted in Exhibit A was established in the United States and Exhibit A provides a sufficient showing of facts to establish a complete reduction to practice.

The declaration under C.F.R. 1.131 is submitted herewith to establish possession of the subject invention prior to the effective date Spear, *et al.* currently cited as a prior art reference in this prosecution. In particular, Exhibit A discloses all the limitations recited in the claimed subject invention. For example, independent claim 1 recites a system for managing welding consumable(s), comprising: a welder having a consumables monitor (*See Exhibit A*, pg. 1, ll. 7-8); and a remote system adapted to facilitate management of welding consumable(s) for the welder based at least in part upon information received from the consumable(s) monitor (*See Exhibit A*, Fig. 1, pg. 1; pg.1 ll. 7-16). Exhibit A additionally discloses specific implementation detail recited in the remainder of the subject claims and thus demonstrates a complete possession of the whole invention. (*See Exhibit A*). If the affidavit contains facts showing a completion of the invention commensurate with the extent of the invention as claimed is shown in the reference or activity, the affidavit or declaration is sufficient, whether or not it is a showing of the identical disclosure of the reference or the identical subject matter involved in the activity. *See In re Wakefield*, 422 F.2d 897, 164 USPQ 636 (CCPA 1970).

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In view of at least the foregoing, it is respectfully submitted that Spear, *et al.* be withdrawn as a prior art reference and that the newly amended declaration under 1.131 be accepted.

II. Rejection of Claims 1-57 Under 35 U.S.C. §102(e)

Claims 1-57 stand rejected under 35 U.S.C. §102(e) as being anticipated by Spear *et al.* (US 6,486,439). It is respectfully requested that this rejection be withdrawn for at least the following reason. Spear *et al.* is an effective prior art reference since the subject invention was reduced to practice prior to the effective date (February 28, 2001) of Spear, *et al.* as described in the declaration under 37 C.F.R. 1.131 submitted herewith.

III. Conclusion

The present application is believed to be in condition for allowance, in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,
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